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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/038,910	01/08/2002	Helmut Fitz	2002_0004A	1343
513	7590	10/31/2003	EXAMINER	
WENDEROTH, LIND & PONACK, L.L.P.			KRAMER, DEVON C	
2033 K STREET N. W.				
SUITE 800			ART UNIT	PAPER NUMBER
WASHINGTON, DC 20006-1021			3683	

DATE MAILED: 10/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/038,910	Applicant(s) FITZ ET AL.
	Examiner	Art Unit
	Devon C Kramer	3683

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 22 September 2003 .

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-50 is/are pending in the application.

4a) Of the above claim(s) 1-21,23-31 and 37-41 is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 22,32-35,42-45 and 47-50 is/are rejected.

7)  Claim(s) 36 46 is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)  The proposed drawing correction filed on \_\_\_\_\_ is: a)  approved b)  disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)  The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)  All b)  Some \* c)  None of:

1.  Certified copies of the priority documents have been received.
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a)  The translation of the foreign language provisional application has been received.

15)  Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1)  Notice of References Cited (PTO-892) 4)  Interview Summary (PTO-413) Paper No(s). \_\_\_\_ .  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948) 5)  Notice of Informal Patent Application (PTO-152)  
3)  Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8+11 . 6)  Other: \_\_\_\_ .

### **DETAILED ACTION**

- 1) Claims 22, 32-36, and 42-50 are numbered incorrectly. The claims must be numbered consecutively. Rule 1.126. Appropriate correction is required.

#### ***Election/Restrictions***

- 2) Newly submitted claims 23-31, and 37-41 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

Applicant elected to prosecute species 2 corresponding to figures 7 and 9. The above claims are directed to other non-elected embodiments in the application.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 23-31 and 37-41 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### ***Specification***

- 3) The abstract of the disclosure does not commence on a separate sheet in accordance with 37 CFR 1.52(b)(4). A new abstract of the disclosure is required and must be presented on a separate sheet, apart from any other text.

***Claim Rejections - 35 USC § 102***

4) The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5) Claims 22, 32-35, 42-45 and 47-50 are rejected under 35 U.S.C. 102(b) as being anticipated by Smalley (3904226).

In reference to claim 22, Smalley provides a device having a fluid cylinder in which two pistons (18, 19a) are arranged in a linearly displaceable manner, wherein a piston (10) is displaceable over a piston rod, an elastically deformable sealing member (21) is arranged between the two pistons which is deformed by being squeezed between the two pistons and pressed against a wall of the cylinder.

In reference to claims 32 and 44, Smalley provides axially extending grooves or passages on the cylinder wall which are capable of permitting the passage of pneumatic medium. Please note that the spaces between the elastomer and the cylinder wall are being read as the grooves.

In reference to claims 34-35, Smalley provides the piston which is oppositely disposed to the piston with the piston rod is provided with a seal which seals the cylinder wall.

In reference to claims 33 and 47-48, Smalley inherently uses pneumatic fluid as a medium in the cylinder and the device is capable of use on furniture.

In reference to claims 42-43, Smalley provides a braking and damping device for a piece of furniture comprising: a fluid cylinder (6) having a cylinder wall, the cylinder capable of being mounted to the piece of furniture; two pistons (18, 10) arranged to be linearly displaceable in the cylinder; a piston rod (12) for displacing the pistons positioned to be capable of engageable by a movable part of the piece of furniture; and an elastically deformable sealing member (21) arranged between the pistons such that when the piston rod displaces one of the pistons, the sealing member is squeezed between the two pistons and pressed against the cylinder wall.

In reference to claims 45 and 49-50, Smalley provides a braking and damping device for a piece of furniture where the friction braking member is manufactured from a rubber material.

***Allowable Subject Matter***

6) Claims 36 and 46 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7) Applicant's arguments filed Sept 22, 2003 have been fully considered but they are not persuasive.

Applicant argues that Smalley does not provide a fluid cylinder. Please note that air is present within the "housing" or cylinder of Smalley and therefor is considered a fluid cylinder by the examiner.

Applicant further argues that Smalley does not provide a fluid piston. The examiner believes that the members of Smalley can be read as pistons because they move within a cylinder and are attached to a rod.

### ***Conclusion***

8) **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

9) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Devon C Kramer whose telephone number is 703-305-0839. The examiner can normally be reached on Mon-Fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Lavinder can be reached on 703-308-3421. The fax phone numbers

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for the organization where this application or proceeding is assigned are 703-308-3519 for regular communications and 703-308-3519 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1134.

DK  
October 28, 2003



JACK LAVINDER  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600